

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department for the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.)

Summary of the 1997 Legislative Session

The purpose of this information release is to provide New Hampshire taxpayers and tax form preparers with general information regarding the recent legislation impacting several of the taxes administered by this department. This release is for educational purposes only.

If you have questions regarding your specific circumstances which are unique and are not addressed by present statute, administrative rule or this Technical Information Release, you must request a Declaratory Ruling, pursuant to Rev 209, from the Commissioner of Revenue Administration.

I. TAX RATES [Chapter 130, Laws of 1997, effective July 1, 1997]

The tax rate that was set for the FY 96-97 biennium has been extended to the FY 98-99 biennium, for three taxes, as follows: Meals & Rooms - 8%; Communication Services - 5.5%; Real Estate Transfer Taxes - \$.50 per \$100 of the price or consideration of the transfer. See Section II through IV, below, for additional changes to these taxes.

II. MEALS & ROOMS TAX - Telefile [Chapter 132, Laws of 1997, effective July 1, 1997]

The legislature authorized and funded an electronic filing program for Meals and Rooms Tax operators. The department plans to implement the new program in early 1998. Under the new program, M&R operators will use their "touch tone" telephone to access the department's M&R Telefile system. Using the key pad on the phone to answer six questions, they will electronically file their return and authorize electronic payment on the 16th of the month; even if they call on the first of the month. The department will publish a separate TIR on this project during the next several weeks.

(For Questions: Call Collections Division at (603) 271-3701)

III. COMMUNICATIONS SERVICES TAX [Chapter 351: 35-37, Laws of 1997, effective July 1, 1997]

In addition to continuing the surtax on the Communications Services Tax, the legislature expanded the tax to pay phones. The tax may be the actual computed amount or an amount computed to the nearest multiple of \$.05. If the tax falls midway between multiples of \$.05, the next higher multiple shall apply. The first positive multiple of \$.05 is \$.05, so it is expected that the actual amount of tax will be collected on basic calls. More details on this change were contained in TIR 97-003.

(For Questions: Call the Audit Division at (603) 271-3400)

IV. REAL ESTATE TRANSFER TAX [Chapter 351:33-34, Laws of 1997, effective July 1, 1997]

RSA 78-B:1-a, V was amended to minimize avoidance of the tax. The legislature added a sentence to the definition of "sale, grant and transfer" in RSA 78-B:1-a, V, that requires tax on transfers of interest in "real estate holding companies." Real estate holding companies are defined in RSA 78-B:1-a, VI, as a "... business organization, as defined in RSA 77-A:1, I, which is engaged in the business of holding, selling or leasing real estate and which:

The transfer of interests in a business organization meeting the above definition shall
(a) Derives more than 50 percent of its annual gross receipts from the ownership or disposition of real estate; or

(b) Holds real estate, the fair market value of which comprises more than 50 percent of the total market value of the assets of the company exclusive of goodwill."

be taxable to the extent of the fair market value of the New Hampshire real estate held by the organization if the transfer of the real estate would have been taxable if transferred directly. The department has started the process of developing rules for this change and will publish a separate TIR once these rules have been drafted.

(For Questions: Call the Collections Division at (603) 271-3701)

V. CIGARETTE TAX [Chapter 351: 57-58, Laws of 199, effective July 1, 1997]

RSA 78:7 was amended to increase the statutory tax rate from 25¢ to 37¢, on packages containing 20 cigarettes. A proportional increase applies to packages containing more or less than 20 cigarettes. The new law includes a "one time" floor tax, to be reported by all tobacco tax licensees. See TIR 97-001 and 97-002 for further details.

(For Questions: Call the Collections Division at (603) 271-3701)

VI. LEGACY AND SUCCESSION TAXES [Chapter 128, Laws of 1997, effective July 1, 1997]

RSA 86:90, VI was amended to allow the tax payer to avoid late payment and late filing penalties by remitting a timely estimated tax payment, even if the return itself cannot be completed by the due date. Under this law change, the penalties will not be assessed in those instances where the estimate payment is equal to 90 percent of the total tax due, on or before the due date, regardless of when the return is filed. In instances where the 90% estimated payment is made after the due date, penalties will apply for the period of time before the estimate was made. As an example, an estate has a return and tax of \$100,000 due on March 15, 1997. The estate makes a \$90,000 estimated payment on June 15, 1997 and files the return with a \$10,000 payment on July 15, 1997. The late filing penalty will apply for the months of April, May and June, 1997, but not for July 1997. The late payment penalty of 10% may be applied, depending on the reason for the late payment.

(For Questions: Call the Legacy & Succession Bureau at (603) 271-2580)

REMINDER: RSA 86:21 was amended by CH 250:6, Laws of 1995. The law now requires that for anyone with a date-of-death after 7/1/95, the executor, administrator or trustee to send the inventory (Probate Form AOC-044-033) to the Probate Court, and to the Department of Revenue. The Probate Court no longer provides a copy of the form to the department.

VII. FRANCHISE TAX (Electric Utility) [Chapter 347, Laws of 1997, contingent effective dates]

The Franchise tax on utilities will be changed to an "electricity user" tax upon implementation of utility deregulation. The legislature passed contingent legislation repealing the current franchise tax that takes effect once deregulation occurs. When effective, the new, lower tax rate will be \$.00055 per Kilowatt hour, collected by regulated distribution companies. The law is scheduled to sunset June 30, 2002. The department will provide further information when the details of utility deregulation are available.

(For Questions: Call the Audit Division at (603) 271-3400)

VIII. TAX AMNESTY PROGRAM [Chapter 351: 43, Laws of 1997, effective July 1, 1997 and Expires February 15, 1998]

The legislature provided additional resources to the department to increase its enforcement ability. In anticipation of increased enforcement, the legislature authorized a one-time tax amnesty period. Starting December 1, 1997, taxpayers will be able to apply for tax amnesty from the assessment or payment of all penalties and interest greater than 10 percent, with respect to unpaid taxes due but unpaid on or before February 15, 1998. The amnesty period will expire February 15, 1998.

Once the Amnesty period has closed, the department will implement the expanded audit program. Post Amnesty cases on tax years prior to December 1, 1997 will have appropriate interest and penalties added. The legislation authorizing the Amnesty program also provides that for these cases, the department will not adjust any interest or penalties. The Amnesty program details will be published in TIR's and other media during the summer and early fall of this year.

(For Questions: Call the Audit Division at (603) 271-3400)

IX. PACKAGE "X" [Chapter 351:12, Laws of 1997, effective July 1, 1997]

RSA 21-J:3 was amended by adding paragraph XXIV, which authorizes the department to

" ... publish and distribute a "Package X" containing department-administered tax forms and instructions, and to recover reasonable costs for such publication... "

The "Package X" proved so popular last year that the department was unable to fully meet the demand. To assure a high quality product and meet the demand, the

department must charge for the "Package X." Information on how to order "Package X" will be sent to those who received it last year.

(For Questions: Call the Document Processing Division at (603) 271-2186)